

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF AIR AND RADIATION

CRITICAL USE EXEMPTION
ALLOCATION FRAMEWORK DISCUSSION

STAKEHOLDER SESSIONS

June 16, 2003

1:00 p.m.

501 Third Street, Northwest
First Floor Conference Room
Washington, D.C.

P R O C E E D I N G S

MS. FINMAN: It is a little after 1:00, so we are going to go ahead and get started. I want to thank everybody for coming, and just touch on a couple of logistics.

If you haven't signed in, please make sure to do either at a break or at the end of the meeting. There are also copies of the slides that we are going to go through sitting on the table out there. So feel free to take a copy.

Obviously, the presentation will be in the docket and we can make copies available to folks if they need additional packets.

There are bathrooms in the hallway over here. If people want to take a break, just let me know. We can stop halfway through.

This is really your meeting, so I want to it to be both informal and informative, and if you have questions, I want to entertain questions all throughout the presentation. If you want to stop and take a breather, I want to go ahead and do that, too.

Today we are going to talk about the many opportunities for stakeholder input in this process. We are also going to go over the timeline for the rule-making, so that you have a sense of where we are in the process now, what the process is going to look like over the next year or so, and then we will get into the actual heart of the presentation, which are what are the various options that we are considering and a discussion of the pros and cons regarding those options.

So, obviously, all of the options that are on the table involve some kind of tradeoffs. So what we want to do is highlight what we see as the tradeoffs to you guys and give you a chance to talk with us about that, point to maybe one option that you think maybe suits you better, or point out other things that we haven't considered, other tradeoffs that we haven't considered.

So, hopefully, we will have some time set aside in the presentation to actually go through and have a discussion, if people don't stop me during the presentation to raise issues or ask

questions.

The purpose of today's meeting is really to start a conversation. We are looking at casting a very wide net to capture as many options as possible. So we think we have done a good job in laying out the options, as far as we can tell, but, obviously, there are other things that we may not have thought of.

There may be gaps in what we have laid out. There may be entirely new options that we just haven't considered, because we don't have your perspective.

So if you can bring those to our attention now, sooner in the process, that will be really helpful.

Again, we are starting the conversation today, but it is something that is going to continue all summer long and beyond, in fact.

There are a number of opportunities for stakeholder input and for us to continue this dialogue. As many of you know, there are sessions around the country, where we will be discussing all

aspects of the methyl bromide phase-out, including the next round of applications, where we are in the process, what is happening internationally, and, also, doing this session, doing the same slides in North Carolina, Michigan, California, and Florida on the allocation session.

Then we will come back here in August, August 15, we will be meeting in the same room, and that meeting will be an opportunity for you guys, once you have had some time to maybe talk with your members or with other people in your community about what the various options are, and to come back and talk with us about whether or not there is a clear preference that you have or to make some kind of comments to us, either in writing or verbally.

Then at any time through this process, this is my number, it is my direct number, feel free to call me. If there is something that you think of ten minutes after you leave this meeting and you want to discuss it, call me.

Then, obviously, we will do formal, we

will have formal comments once we publish the proposed rule, and that part of the process is pretty familiar to many of you.

So we will be doing all the normal stuff and we will also be doing a lot of informal outreach before we even get to the proposal, so that you know what we are thinking and we know that you are thinking.

Before we get too far into the presentation, I wanted to stop and to thank everybody in this room. I wanted to thank you guys for learning with us, because this has been an unusual process.

There is both a domestic and an international component and we don't normally interact with you guys in this capacity for other rule-makings.

So this has been a learning process, and I want to thank you guys for being partners with us. The good news is it is an annual process. So we will get better at this and so will you.

So with that, I would like to actually get

into the heart of the presentation, with the discussion of the rule-making and the time line for the rule-making.

So right now we are in the process of developing options and analyzing those options and writing the rule.

Then our goal is to have a published rule, a proposed published rule in December, so that you guys can read it, provide us with comments. We would reconcile those comments in the early spring and have a target publication of the final rule in July.

Now, this is a very tentative and aggressive time line. So this is very ambitious, in part, because we recognize, we have heard from you that you would like to have as much certainty as possible. So we are striving to provide you with as much certainty as possible as soon as possible.

January 1, 2005, the tap shuts off and you are going to need a critical use exemption and you are going to want to know how to get it and you are

going to want to know that maybe before December 2004.

So we are working really hard to try to provide as much certainty in advance as we can.

So there are a number of questions. Before we get into the options, I want to lay out some of these what I am calling key policy questions that haven't been answered yet, and they impact maybe the efficiency of a rule.

There may be other impacts that it would have on a particular option, but these are some questions that haven't been answered yet.

Some of these questions may be answered by the parties in November 2003 when they meet, and so we will have more certainty after November about what these answers are going to look like to these questions.

Some of them maybe purely policy questions, answered by the U.S. Government. We may see comment on various options on how to answer some of these policy questions.

This slide here is really important for

you guys to focus on, because it involves tradeoffs, and we want to know from you if there is a preference about one kind of tradeoff or another.

So some of the questions that haven't been answered yet include the total amount of methyl bromide available for use in the U.S. Now, that is not a question that is in our hands anymore. That is something that is going to be determined by the parties when they meet in November.

There will be an authorization for the amount of methyl bromide. The restrictions on that cap or that amount that is given to us by the parties, though, there are some significant policy questions there.

Again, it is probably going to be up to the parties, but it is good for us to think through, because it does impact the viability or maybe some of the benefits of options that you may prefer.

For example, are we going to get an allocation from the parties that is completely fungible? So they say you get one amount of methyl

bromide to use for all critical uses in the U.S.
Or are we going to get something that is more restricted; that is, X tons or X kilograms of methyl bromide for use in strawberries, X for tomatoes, X for ginger.

And if we get an allocation that is more restricted, what does that mean? It may mean that you can't -- those uses aren't fungible, that you can't trade across those uses. So this is important information to be aware of.

The period of compliance, we have asked for two years worth of methyl bromide. We nominated uses in 2005 and 2006 in our nomination. Other countries have requested multiple year exemptions.

It is not clear yet and a decision has to be taken by the parties as to what the period of compliance is. Are these one year allowances, are they two year allowances?

The definition of a user. This is probably a question we are going to end up having to deal with at the government level. The question

is, who can use critical use methyl bromide. Is it anybody who is in a qualified sector?

So, for example, the U.S. put forward a nomination for tomatoes grown in Florida. Is it any Florida tomato grower or is it only a member of FFVA who made the original application to EPA?

So this is a policy question and it does impact the cost-effectiveness of certain options, and it is important for you guys to think through, and if there is a preference, to let us know and, hopefully, let us know early.

Then this last point, which I will actually come back to at the end of the presentation, it is a little confusing. It has to do with how you are going to produce and import methyl bromide into the U.S. Are you going to do it all up front? So the parties say here is your 39 percent of baseline and then we produce 39 percent of baseline. Or are we only going to produce and import methyl bromide once a user says, okay, I want to buy it?

So that is the basic question there.

On the next slide I have laid out some -- the list could be much more extensive, but some basic pros and cons that you should sort of think through when you are looking at these questions.

So the type of the authorization. It can be one amount. It could be for each sector. It could be more restricted. The parties could say just Michigan tomatoes get this much and Florida tomatoes get this much.

We really don't know yet what the final authorization from the parties is going to be like.

It can impact what type of trading provisions would be efficient and could take away some of the benefit if allowing trading if you've got really restricted pools amongst which to trade.

So there are tradeoffs between having one large pool of methyl bromide and having several smaller pools of methyl bromide.

It is what some people characterize as the equity versus efficiency issue. So if everybody is competing within one pool of methyl bromide, it may ensure that the methyl bromide goes to the highest

value use and it may lower compliance costs for the industry, but there may be a perception amongst people in the industry that it is not fair or that some operations may be not be able to compete against a more profitable type of crop.

They may feel that they are disadvantaged under that kind of system, if you have universal trading. These are some things to think through.

The period of compliance. If we have more than one year, that may be more cost-effective. It may be easier for planning purposes. But, again, we still don't know yet, because the parties need to take their decision in 2003.

The definition of a user. If it is more broad, if it is every qualified farmer in that area or in that crop, then you may end up with lower compliance costs. It may actually bring down the cost of doing the program.

But there may be some extra burden associated with notifying us that you are part of this approved FFVA membership or this approved -- that you are part of the original application.

There may have to be some kind of demonstration of that up front, and that may impose some extra burden.

So on the one hand, you may have lower -- it may drive down the price of methyl bromide or it may lower compliance costs, but on the other hand, it may impose some extra burden on industry not to demonstrate that they are part of this pool.

You have issues about fairness. If I applied for a COE and it cost us money, it took time to apply for a COE, and then you just give it to everybody in my state, is that fair?

So those are some of the questions that we are trying to lay out for you guys and, hopefully, if we can get some feedback on preferences and options, that would be really helpful.

Then the point about how methyl bromide will be produced and imported. If we wait and we don't produce all the material up front, there may be some benefit to the environment, but there also may be issues about the supply chain and it would accrete stickiness in the supply chain.

So, again, just another issue to sort of think through.

So I want to stop right here, because this is a little bit complex, and see if there are any questions, things I can clarify, any sort of initial reactions. I was perfectly clear? Yes.

Deanna, would you mind walking around the microphone? We have a court reporter here. So in order for her to make sure she gets all the comments, we'll walk around with the mic. If you could just say your name and who you are with, that would also be helpful.

MS. BOOKOUT: My name is Anne Bookout. I'm with Royal Fumigation. Is there an existing agenda item or an existing proposal to make some of the exemptions more than one year? Is that something that is on an agenda now with the Montreal protocol?

MS. FINMAN: Yes. At the international level, the parties have to decide how much they are going to authorize. They also have to decide how long they are going to make that authorization for.

Some countries have requested multiple year exemptions. So it would be maybe a two year exemption or a three year exemption, what have you, and it is not clear yet if it is going to be a one year exemption and so if you don't use it that year, it expires, it's gone, or if there is going to be carryover allowed from calendar year to calendar year, because it's a multiple year exemption.

So that is something that the parties, when they meet in November of this year, they will be taking decisions that lay out some of those parameters.

MS. BOOKOUT: Is it also then open for discussion whether a multiple year exemption would apply across the board or whether it would be limited to one industry, for example?

MS. FINMAN: I think that the way it would happen is the parties would make a decision and that decision would be applied broadly.

I don't really know why the U.S. would then be more restrictive with one sector and less

restrictive with another sector. But if you have some thoughts on why we would want to do that, I would be interested in hearing that.

If the parties said it was multiple years and they said you have a two year exemption, I think we would have a two year exemption, with some kind of interim reporting or what have you, but we would have a two year exemption and we would treat all sectors the same in that regard.

Does that answer your question?

MS. BOOKOUT: Somewhat. Thank you.

MS. FINMAN: Are there other questions?

Pass it back there to Dan, or there is that microphone.

MR. BOTTS: Now, this is just a clarification. The petitions that were submitted by Florida Fruit and Vegetable Association -- I'm Dan Botts from Florida Fruit -- were done on behalf of the total industry, and Florida would disregard for membership in the association.

MS. FINMAN: That's good to know. There are a number of applications that were submitted by

a state on behalf of all the users in that state.

So if we are in the same position, if all the applications were submitted on behalf of some larger group, that is good to know and that could make this decision a little bit easier.

Jim? Then we'll come up to you.

MR. WELLS: Based on the response so far that you have gotten from --

MS. FINMAN: Jim, could you just state your name?

MR. WELLS: Jim Wells, California. Based on the response that you have gotten so far from the T-up, who have asked specific questions about a particular sector and they want that response, what indication do you have that the parties might grant this to be totally fungible; I mean, that they might just give you some large amount, and when are we going to find that out is not until November?

MS. FINMAN: Yes. We wouldn't find out until November, because the parties would have to take a decision. Now, obviously, we have a meeting in June, the open-ended working group meeting, and

so there will be discussion items.

People will probably put proposals out there. So if you don't see a proposal from anybody that says we should have a multiple year exemption, it's not going to come up in November, most likely.

But I anticipate that since a number of countries asked for multiple year exemptions, that, in fact, there will be a proposal requesting multiple year exemptions.

As you know, the T-up and the MBTOC are advisory groups to the parties. So they don't take decisions. They can make recommendations based on their technical expertise, but it is not within their purview to determine the length of the authorization.

So that would be decided by the parties.

MR. WELLS: To be clear, I wasn't talking about the multiple year. I was talking about get one amount for all crops and you get to decide where to use it.

MS. FINMAN: And the same thing. We will see proposals and if anybody asks for it, then it

will be an agenda item. Then we will see whether or not it becomes a formal decision.

You had a question?

MS. LUDWIG: Gabriele Ludwig, with Schram Williams & Associates. We work with various California commodities.

I was just curious, sort of maybe going to the next step. Do all -- let's say all the COEs were to get the official blessing. Does only one method of allocation, is that -- EPA is looking for only one way of doing it or is it something where you would consider that, let's say, for one group or for one situation, let's say, for post-harvest uses, one way of allocating might make more sense than for some pre-plant uses?

I'm just trying to get a feel for if EPA has even considered, in terms of policy questions, whether it should be one or if multiple options could be possible.

MS. FINMAN: That's a good question. To date, I think we have been thinking that it would be one mechanism that would apply to everybody,

which makes it easier for reporting and everybody is following the same rules. If there is a particular circumstance or issue that comes up where one industry just doesn't fit within this method, if you could bring that to our attention early so we can figure out how to either adapt that option or to maybe go to a different option, that would be really helpful.

I know in the case of California, which is your interest, the Telone caps is a big issue. So any model that we ultimately propose would have a built-in mechanism that would accommodate those people who have contingent nominations, but who are only able to get methyl bromide once the Telone cap has been had.

So we would have to build that in to any option that we end up going with. Back to Reggie.

MR. BROWN: Reggie Brown, with the Florida Tomato Industry. Looking at your time line for rule-making, in light of the fact that we don't get answers to the questions til the point that you are proposing publishing the rule in the Federal

Register, it is going to be real hard for some of us to make really intelligent comments when we don't know the answer to the primary question of what do we get, how long do we get it, and under what circumstance do we get it.

MS. FINMAN: Right. There are a lot of different questions that we need your feedback on. So I have highlighted the ones where it is going to be hard for you to give us feedback because of the time line, but there are a whole slew of issues that it would be really helpful to get input from you on, and we can start doing that now and that's where we are.

But one of the reasons why we are trying to have this really open and communicative process is because things are changing rapidly and because there is not a lot of time til January 1.

So we can't really wait until after November to start this process. But you have my phone number and I definitely want to hear from you if something comes up.

Other questions up front?

MR. McALLISTER: I'm David McAllister,
with Great Lakes Chemical Corporation.

I just wanted to make a comment on the up-front or
redeemable production question.

Right now we are in a situation where we
have a baseline production at 30 percent of the 91
baseline that is allowed. Then on top of that,
something, a redeemable production component in the
QPS exemption.

But we do have a baseline that we can
count on plus some redeemable component. I think
the ability to plan production is very important
and if we were to go to a system that the CUEs were
based on redeemable production and QPS exemptions
are based on redeemable production, that is all
we're left with and that would make production
planning very, very difficult.

So maintaining an up-front component to
that, to sort of base load the system, I think is
important to us.

MS. FINMAN: Thank you for that comment.

Tom?

MR. LANN: I just want to clarify. I don't view the QPS system as redeemable. You don't have to wait for a person to -- a user to actually place an order all the way up the chain.

We talked about that option right at the beginning of the options for the QPS model of having an order placed before you could actually produce it, but we intentionally, for the QPS, did not create that type of a system.

You have the freedom to estimate how much might be needed for the year and we recognize that that amount may not equal the amount that is actually ordered by the end user.

So there is no linkage between the amount that you can produce and an order by a user.

So QPS isn't redeemable, I guess is what I'm saying. It is free. You have no cap. You can create as much as you want and the people who end up buying it have to certify that they are using it in accordance with that, and we recognize that there may be disjunct in any one year between the total amount that you produce and the amount that

is actually ordered and used for QPS.

When we talk about redeemable, we're talking about having your production wait until a user actually places a critical use exemption order.

Just clarifying the model.

MS. FINMAN: So you may have made life a little bit easier for these guys, right, just now?

MR. McALLISTER: I think that is largely true, although, as you mentioned, we don't want to get too far out of synch, our production to get too far out of synch with the orders. Otherwise, we end up having a stockpile, a storage problem, and those sorts of things.

So we do have to make some kind of estimate, which we may adjust as time goes on during the year, and, admittedly, we don't have to have certifications that come all the way up the chain. All we have to have are certifications from our customers.

But I think maybe it's not purely redeemable, but I think there is a redeemable

component to it that we don't want to get too far out of synch with those.

MS. FINMAN: Great. Thank you. For the record, that was Tom Lann from USEPA.

Are there other questions or things that you want to talk about on these past couple of slides, or are we ready to move on? Let me move on.

So what we have done is we have outlined three basic frameworks for different ways you could go about doing this initial allocation.

Really it's more than three options, because you still have some of these open policy questions and because there are other permutations that we are going to discuss.

Really it's a 100 options with all the different permutations, but we have laid it out as three frameworks for you to think about, so that we could get this conversation started.

We have called them, the three options that we are working with, we are calling them the QPS-like model, because it works a little bit like

QPS. The second one would be the QPS-like model with something we are calling the Canada-like model, because this is how they do it in Canada. Then the third one would be the QPS-like model plus an auction model, with an auction component.

We are going to go ahead and talk about these three options in greater detail and also lay out some of the permutations for you guys.

So the QPS like model, it works a lot like the phase-out regulations that already exist and QPS. It works like the phase-out regulations in how it treats the producers and importers by capping the production and import of methyl bromide for critical uses, based on what the parties authorize.

So we would cap what is given to us and then give allowances to producers and importers. So that would look just like the current phase-out program, but it also looks like QPS in that when a user would go to buy methyl bromide, they would have to certify, just like they do under QPS, under the quarantine and pre-shipment exemption, that

they are an approved use or they are going to use it for an approved use.

So at a minimum, this is what we are required to do. We need to figure out some mechanism to create the supply of critical use exempted material.

So at a minimum, we are going to do something that creates the capacity for the U.S. to produce and import methyl bromide for critical uses.

Then once we get to the other options, we're going to discuss additional provisions that would provide more certainty to the actual end users.

On the next slide, I sort of have a flowchart or a graphic depiction of what it looks like, what this model looks like. So the parties would authorize the critical uses. These are your X approved uses and this is the amount you get.

Then the EPA, in consultation with the other agencies, would then allocate the allowances to the producers and importers, and we do that in a

rule-making. We've got really good baseline data there. So it should be pretty easy.

Then the producers and importers would either produce and import the methyl bromide or they would wait until somebody came forward and placed an order for methyl bromide, but they would create the supply, expending their allowances to do so, and then sell methyl bromide to the end user and when the end user goes to the marketplace to purchase his or her methyl bromide, they would have to certify that they are an approved use.

So that is what it looks like.

In terms of what the burden is on industry under this model, since most -- since we are really mostly regulating the producers and importers, that is where the bulk of the burden would be, but it would be just like the phase-out or very similar to how it works under the phase-out. So it wouldn't be a new system.

There would be quarterly reporting to EPA on expended and unexpended allowances, annual reporting on the amount of methyl bromide produced

and the amount sold, and then certification record-keeping requirements.

The distributors would only have to report to us annually and they would report the amount of methyl bromide bought, the amount of methyl bromide sold, and who they sold to, and then they would have to keep certification records, as well.

Then applicators would report to us how much methyl bromide they have bought and how much they used.

So what is different here from under the phase-out is the distributor requirement, tell us who they sold this to, then the applicator reporting requirement. The reason why that is different here is because we have a requirement under the protocol to track stockpiles.

So that additional reporting requirement may, in part, be offset by the once a year reporting on distributors instead of the quarterly reporting on distributors.

So that would be the basic mechanism of how we would know that we are in compliance in the

U.S. and how you guys would be able to tell us where you are with your allowances and how much methyl bromide has been used for CUE purposes.

Is this clear? Are there any questions?

Okay. Dave, and then Dan.

MR. McALLISTER: Just one question about this. In the event that the parties did not agree to allow trading of the allowances across sectors, my understanding is that a system like this would mean that in addition to having a -- each manufacturer would have a certain amount of total allocation, but within that total allocation, there would be like 16 segments that would also be part of the record-keeping.

Is that correct?

MS. FINMAN: Yes. That's exactly -- that is the case.

MR. McALLISTER: Okay. Just wanted to make sure.

MS. FINMAN: So if we have one pool, it would be here are your total CUE allowances, but if we have sector-based authorizations from the

parties, you would get a certain number of strawberry critical use allowances, a certain number of tomato critical use allowances, et cetera.

MR. McALLISTER: Okay.

MS. FINMAN: That is exactly it. Then to Dan.

MR. BOTTS: Going back to the Florida use petition in this scenario, where there was a total amount requested, which was reduced based on criteria that was developed internally at the agency or through the negotiation process, where we made an application for acreage in Florida, how would that criteria be overlaid against the quantities that were allowed to be sold to a distributor for use at the individual grower level?

I guess my question is who would certify that the need was actually there based on the criteria that was used in reducing the petitions that went forward to the international community?

MS. FINMAN: Right. The total amount that would be available for that use is obviously what

the parties authorize based on what we nominated.

So what I think you are asking is because we went through the nomination and we said, well, this percent has heavy to moderate Nutsedge infestation and this percent doesn't, would then a user who doesn't have heavy Nutsedge infestation be able to buy CUE material.

Is that your question, Dan?

MR. BOTTS: Essentially.

MS. FINMAN: Essentially. We're not looking at being that restrictive, but if that is something that you feel is important, you could make the certification requirement more or less restrictive based on those requirements.

So if that is something that you guys are interested in seeing us do, we could build that in. So instead of just certifying that it is an approved use, there would be -- an approved critical use would mean something pretty specific in this case.

So we could do it that way. Does that answer your question or make sense? Is this

something that you -- do you want users to be able to buy it if they only have, like, Nutsedge infestation, or do you want them to make sure that it is only those users with the heavy infestations that would be able to get it?

MR. BOTTS: Our supposition in the nomination that went forward from the Federal Government to UNEP was that that assumption was an invalid number and should not have been used in the way it was used, and we will be submitting additional information in the 2003 round of CUE processes.

But this is not specific to that question conceptually, because I think almost every industry sector had that same type of analysis, with the exception of three that I'm aware of, or two.

There is a difference in the number that was requested from the number that was requested by the Federal Government, and that puts a tremendous burden on somebody at some level to assure that what is actually put on the ground, depending on what comes forward, goes to where the need is

identified exists.

So I'm not suggesting one way or the other, because, quite frankly, I don't know how to do it either and I don't want to be in a position, as a trade association, of having to make a cut on my membership based on assumptions and decisions that were made at your level, but I'm not sure I want the Federal Government making that decision.

I want to made a lot closer to the ground level where the problem exists.

MS. FINMAN: Right. On the one hand, we could construct it so that any user, when they go buy their methyl bromide, they know that these are the criteria for being critical use. You are this, you are this, you are this, and you are this, and it is based on this analysis that was conducted at EPA.

Then they know that they meet those criteria and they self-certify that they meet those criteria when they go buy it. On the other hand, we could make it less restrictive and if they feel they need it and they are an approved use, that

they can go ahead and buy it.

Then, obviously, we'll be getting additional information from you guys and from other users to supplement what we have already put forward in the event that you feel that we may not have represented something accurately.

So we could build that into the system, as well. But that is a good point.

Did you have a question, Reggie, or you're just passing the mic? I could get Dan one of these wireless mics next time.

Are there other questions on this? These are really good points that everybody is bringing up.

MR. BROWN: Well, we'll weight back in, Hodayah, if I may.

MS. FINMAN: Please.

MR. BROWN: If, in fact, you put out X quantity into a commodity group and you had seasonal uses of that product by varying segments of that commodity, how would you propose dealing with the fact that the first group of users didn't

consume all the quota?

MS. FINMAN: So you mean that there is extra?

MR. BROWN: No, no, no, no, no.

MS. FINMAN: Okay. That they're flat.

MR. BROWN: Say you gave 40 percent of the demand out there in the CUE and the users of the methyl bromide, in the first quarter of the year, used up 40 percent of the demand for -- used up the whole CUE.

How do you deal with that?

MS. FINMAN: Right. It's a good question and maybe this is something that folks in the audience have a perspective on.

I'm not sure how it works, whether or not users are putting in place contractual agreements up front at the beginning of the calendar year when they are doing their planning. So I'm not really sure to what extent is a problem for how many users.

MR. BROWN: End up putting it all out for bid and the highest, the man that will pay the most

money gets the gas?

MS. FINMAN: How does it typically work in your industry now? If you could help paint that picture. Do people basically buy it a month before they need it or are they going to their supplier on an annual basis and saying this is the amount of methyl bromide I need, I'm treating this many acres this year?

How does that work?

MR. BROWN: Most of it is probably bought fairly well in advance of the season or committed to, is it not?

PARTICIPANT: The same grower has been growing for so long, I mean, the history is pretty well established. So everybody knows what they are going to use.

I guess the physical placement of the order could be anywhere from a week to six months, a year in advance, because, basically, as a distributor, you already know who your customer is and what he is going to be doing.

MS. FINMAN: Tom?

MR. LANN: Tom Lann, EPA. I just want to make one statement. It's kind of a principal in going into this. It's a proposal that we are talking about, and so there are lots and lots of options and you guys are already expanding the options and questions that we have been considering.

One of the principals that we generally walk into something like this with is that we don't want to get involved in over-regulating the market.

Reggie's question kind of begs that. How do you make sure that people who have growing seasons at the end of the year are ensured of getting material?

Right now, it's on a year by year basis. Somehow those people get material at the end of the year. There is a restricted amount and you have probably excess demand of supply. We don't regulate how that gets distributed in a year right now.

We don't want to, as a regulatory agency, get super-involved in how the market operates

during the year.

Unless you say, and there is a large outcry, you need to come up with a system that spreads it out over the year, and your comments and what you tell us clearly says we want, above all else, equity amongst everybody.

MS. FINMAN: We could probably construct the system so that you hold back a certain amount of production until midway through the year or something and we may get comments from the producers and the importers about whether or not that is feasible.

But we could probably do something like that, if that is something the industry feels would be beneficial or that they would want.

But like Tom is saying, we are trying to take -- we are trying to not intervene in the marketplace where we don't have to. So to the extent that we weren't doing that now, that is something that we just haven't given a lot of thought to, doing that type of intervention. But another good question.

Are there comments or questions?

MS. HEINZMAN-SMITH: Tracy Heinzman-Smith, methyl bromide industry panel. Just following up on what Tom just said.

Maybe this is going to come up later, but you could have some sectors where they don't use any of their amount during the year, for whatever reason. Maybe they have some left over or they anticipated a greater pest outbreak, whatever.

If there is another sector that needs that material, is there a possibility of the sectors trading? Even though it was allocated to a specific pre-plant use, would there be a way to swap, so to speak, so that nobody is left out?

MS. FINMAN: Let me answer that question for you. If the parties give us an authorization that is restricted, we would most likely not be able to trade between those uses. It would only be within that use.

If the parties gave us one broader pool methyl bromide, then, obviously, that wouldn't be an issue. You could trade amongst uses.

So it's a question of how the parties are going to --

MR. LANN: Let me expand on that. We're not the only people learning. Here in the U.S., the U.S. Government, the whole world is walking into this with their eyes wide open and in the prior exemption process that the parties went through with CFCs for meter dose inhalers, it started out where they were allocating to countries three different CFCs, specific amounts.

Through time, they realized that, in fact, it would be better to give countries a pool of those three CFCs. So they said, no, we're not going to give you an amount of CFC-11 and an amount of CFC-12 and an amount of CFC-114, we're going to just give you a total of CFCs, so that there was some fungibility.

I'm just painting the picture, because it is likely that what will happen, having been in it, that the parties will end up learning as they go along and things will not be static and they will change.

As Hodayah said, it depends. Parties may decide right off the bat, okay, country X, United States or Australia, here is your total amount; you have to manage your critical use exemption process.

It is also possible they will say based on what you have provided to us as a basis for need for an exemption, here is your amount of methyl bromide for Florida tomatoes with moderate to high Nutsedge pressure. Go to the other extreme.

And how we design a system -- the proposal is going to talk about all of this, because we are going to have to talk about all these possible options.

Again, it is probably going to change through time.

MS. FINMAN: So in the nomination, we asked for flexibility. We asked for maximum flexibility, but the decision, we will have to wait til November to see what the final answer on that is.

Does that answer your question, Tracy?

MS. HEINZMAN-SMITH: Well, then, when will

the U.S. be formulating its negotiating position on some of these points? Obviously, that has to happen well in advance of November. Is that something that is going on now in advance of the July meeting?

MS. FINMAN: Yes.

MS. HEINZMAN-SMITH: Okay. So if this is really important to folks, they need to be telling you.

MR. LANN: Yes. Absolutely.

MS. FINMAN: Okay. I'm going to move on to the next slide, where, basically, we just flesh this out a little bit more.

So the allowances would go to the producers and the importers. They are the allowance holders.

Trading between the producers and importers would be allowed, just as it is now under the phase-out. So you could transfer your allowances to a different producer and importer with an offset.

The reporting and record-keeping, we have

already walked through that. The enforcement would be just like the rest of the phase-out; the Clean Air Act penalties.

Then the stockpiles, we have already discussed how we would get the information on stockpiles and then we would annually report that or something to that effect.

Under the second option, where we go about creating allowances for producers and importers, so that the supply is in place. We could also tack on an element downstream that allows for end users to have some kind of certainty about how much methyl bromide they get.

We call this the Canada-like option, because they actually do something similar to this in Canada, where they create individual baselines for each user.

So it gets a little bit more complicated because there are so many different entities involved. There are hundreds of thousands of end users.

So it is a bit more sophisticated. So we

would also create something like an automated database system to track allowances, if we were to do something like this, and that would help the users trade allowances or transfer allowances from one another and it would also help us make sure that we are still in compliance with our protocol obligations and Clean Air Act obligations.

So I am going to go ahead and flesh this out a little bit more. Under this option, you would have what we just discussed with the previous model, but in addition, we would have another set of allowances that are distributed to individuals, to individual operations.

We also thought that consortia or states could get these allowances, but these are not options that we are considering presently, because the states, it would be an unfunded mandate for them and we don't think that that obligation would necessarily be correct to place on them without the funding.

And the consortia, the applications that were placed with the U.S. Government to get a

critical use exemption, in some cases, were submitted by a researcher at an extension service or at a university, and these are not necessarily legal entities that have an infrastructure to distribute allowances.

So we have been focusing mostly on giving allowances to individual operations to those people who would be using the methyl bromide.

In terms of doing the distribution, under this model, you would have to provide -- each individual operation that is interested in getting an allowance would have to provide us with data, because right now we only have aggregated consortia level data. Since we need to figure out how to get the allowances to the end user, to the individual, and we can't rely on all the consortia to be able to do this, we would need individuals to come forward and say I would like some methyl bromide and here is my historic data that shows how much I have used in the past and, therefore, how much I need in the future.

Then there would be -- again, you could

have a provision that allows for trading or transferring of allowances, because people may not know exactly how much they are going to need and they may decide that it is more profitable to use an alternative and sell their allowance or that they really need to buy allowances.

I am actually going to walk through some graphic options of how this model would look, and it will become a little clearer. But in order to then take your allowance and then go get your methyl bromide, it would be set up in this automated system that you have the appropriate number of allowances and it would notify your supplier of choice that you can go ahead and buy the allowance and that you would be able to maintain the certification there.

Then the reporting and record-keeping, it would be pretty similar to what we have already discussed, but in this instance, there would be a true-up period at the end of the year, where users would have to demonstrate that they had enough allowances for what they bought, and hopefully you

do, because we've built in a mechanism that wouldn't let you buy it unless you had enough allowances.

Tom?

MR. LANN: I just want to say one thing about the offset. For those of you who have been dealing with us for a long time, you understand that trades of existing allowances that we use for other substances, the Clean Air Act requires that a trade result in a benefit for the environment, and this is the way we actually implement that.

It is required under the Clean Air Act for CFCs and other substances. There is a one percent offset taken for the environment every time there is a trade and we just implemented the full framework for the HCFCs. For HCFCs, it is .1 percent.

So in the proposal, again, in our proposed rule, we will talk, we will discuss this at length, and propose one option, but, also, talk about other options and other offsets, ways of achieving it and how big it should be, et cetera.

MS. FINMAN: So under this option, there is a lot of extra burden on the industry, but it is also the option that will get you the most certainty to the individual.

So that is the explicit tradeoff involved in this option and it is something that we would like to hear from you about in greater detail.

If this is something you want us to do, it is something we can do, but please recognize that it involves substantially more work on your part and our part, too.

MS. HEINZMAN-SMITH: If I'm a producer, under the model with the QPS in Canada, are you saying that you get the same -- you get the allowances as in the other model based on the 91 baseline?

MS. FINMAN: Right.

MS. HEINZMAN-SMITH: And then the second set of allowances is basically among the users.

MS. FINMAN: Right.

MS. HEINZMAN-SMITH: So they would go to different suppliers or producers.

MS. FINMAN: That is exactly it.

MS. HEINZMAN-SMITH: So there is still certainty, to some extent, to the producer to know what they could produce.

MS. FINMAN: Right. Exactly. That is why we have constructed it like this. Other questions? Gabriele?

MS. LUDWIG: This may be too early for this, but the more I am seeing this, the more I do think EPA may want to have to consider different models for different scenarios.

MS. FINMAN: Okay.

MS. LUDWIG: Because, for example, this option might make sense for annual crops, but for perennial crops, where the usage of methyl bromide on a particular piece of land is going to be once every 30 years, it's a little hard to go to that historical background and say this is how much you are going to need, or you have people that move into, from one kind of permanent crop to another permanent crop.

So I just want to point that out, that is

to say, just one thing that pops into my mind, between the post-harvest uses, between the annual crops, and between the permanent crops.

I'm not convinced at this stage of the game that one model is going to fit all situations.

MS. FINMAN: That is a good point. So for perennial uses, we would have to construct an additional parameter that would allow for us to come up with a reasonable way to give them a baseline allowance.

So the model would still fit, but we would have to be more thorough in coming up with how we got about making that baseline allowance determination, because, obviously, acres planted wouldn't apply to everybody. That may not be a good case.

So thank you for bringing that up.

MR. McALLISTER: Just a comment that applies to this option. It may apply to other options, as well. I notice from the time line that you presented early on, I think it called for a final rule about July of '04.

That would allow, roughly, six months between the final rule and January 1st of '05. There is a lot of work here for users. There is also a lot of work for the agency in getting such a system set up.

Is it realistic to think that all of that could be done in six months?

MS. FINMAN: It is a very good question. In fact, I will touch upon it in some slides later on as one of the pros and cons.

It is possible that -- I mean, this is fairly complex, there is no doubt about it -- that we may end up being in the position, if we are to choose this type of model, where we would have to go with something like the QPS model starting January 1, 2005, and then we would phase this in at a later date because it's not ready by January 1, 2005.

Now, we are trying to make sure that doesn't happen, because we understand that there is enough moving parts already that we don't want to make it more difficult for people to be able to

comply with the Clean Air Act requirements that are going to be promulgated.

So we are shooting to get everything done and up and running in time, but it is possible that we would be functioning in a different way. WE would have basically two different compliance systems, one that starts January 1 and one that starts whenever it's ready.

But it is a lot of work for both you guys and for us and not a lot of time to do it.

I think there was another hand up. Same question, okay.

So we will go ahead to the next model. The next model is very similar to this, except instead of having individual companies and individual operations come forward and say we want methyl bromide and here is our data, it would involve an auction instead.

So, again, we are doing the same things we did under the QPS-like model to create the supply and then downstream to the end user community, instead of giving us data that substantiates

individual baseline, we would create an auction that would allow users to vie for an allowance for that methyl bromide.

Again, there would be an automated tracking system so that people would be able to know how many allowances they have very easily. They would be able to transfer allowances if they wanted to, and it would be easy for us to ensure compliance.

MS. BISHOP: Cherae Bishop, with Weyerhaeuser Company. Would that be based on sector or would that be just kind of an overall auctioning process for the whole --

MS. FINMAN: It's a perfect question and it may lead into the next couple of slides, but yes. If the parties gave us one broad pool of allowances that could be used for any critical use, we could have just one auction and all users would vie for allowances under that auction.

If the parties say you have this many tons for strawberries and this many tons for ginger, then we would have to have separate auctions for

those users to compete with end use.

So it depends on how the parties give us the authorization. The parties will meet in November of this year and they will be deciding certain policy questions, like how many years is the exemption for; what method are they going to use to give us the authorization; is it going to be one fungible pool of allowances; are they going to restrict us by sector or more than that.

Tom used an example earlier today of they could say anything from here is all your methyl bromide for the U.S. for critical use exemptions, at the broadest end, and then all the way at the most narrow end, something like here are your allowances for tomatoes in Florida with moderate to heavy Nutsedge infestation, with certain types of soil conditions.

So those are the two extremes, and we don't know how the authorization is going to come from the parties yet, but we can make this accommodate either one. That's the beauty of it all.

So under this option, again, it has a lot of the same elements from the QPS-like model, but where it differs is downstream at the user end, there are some additional parameters.

So the first question, and this is one permutation, is who conducts the auction. Is EPA going to conduct the auction? Are we going to pay somebody to do it? Is somebody going to do it for us for free? How much is going to be auctioned?

Are we going to auction everything that the parties give us or are we going to have a set-aside? So, for example, maybe a set-aside, we would take a certain amount of allowances out at the auction and hold it back for separate auction for people with hard luck cases or certain sized entities or what have you.

We can do that, but it would involve extra work and coming up with those criteria.

Reggie, do you have a question?

MR. BROWN: This is a maximum tax plan to offset the tax reduction?

MS. FINMAN: Yes.

MR. BROWN: That's what it looks like.

MS. FINMAN: Another good question from Reggie. So the set-asides, and this gets to the question of how much are we going to auction. This is kind of the seasonality question maybe that you were asking before, Reggie, about whether or not all the allowances are going to be available at the beginning of the year or are we going to sort of ration those allowances throughout the year.

So we could set it up so that we have one auction at the beginning of the year or we could set it up so that we hold back 50 percent of the allowances or ten percent of the allowances or something like that and do a second auction later on in the year, which may actually be beneficial, because those people who are applying for methyl bromide, at the second bite of the apple, so they are making applications now for 2005, there is not going to be a lot of time between when the parties make their decision in November 2004 and the beginning of the compliance period in 2005.

So we may actually want to make sure that,

for planning purposes, that nobody is disadvantaged and that we have two auctions throughout the year for those guys and for the people that have different seasonality.

The bid type. Now, at an auction, you can go ahead -- there are plenty of different ways to structure an auction and determine how people are going to say how much they want to pay for an allowance.

We are pretty much limited to one type of option, because we do not have statutory authority to intervene with the market price of methyl bromide. So we can't do something where we are setting a maximum or a minimum bid and then you guys work from there.

So the bid type would be a sealed bid from you guys, with no reserve, because we can't specify a minimum amount.

Now, there is a question about who can bid for an allowance and who can actually hold an allowance. We would want to construct this system so that anybody can hold an allowance, but only

somebody who is an authorized user.

So only an actual user can buy the allowance at the auction, but then they can sell it to anybody they want.

The benefit of doing this is that you can then sell it to brokers or traders, speculators, who would then be able to hold allowances and sell them.

I see a lot of smiles around the room, but we've got some experience working on auctions in other programs and having speculators and brokers and that sort of thing has really helped improve the efficiency of the trading market and ultimately has resulted in lower cost.

But I recognize that this is a really new concept for a lot of people in the room.

I'm actually going to go a little bit slower now and maybe -- are there any questions? And we have a bunch of economists here, too, who I'm sure can pipe in.

MS. BISHOP: Can you conceivably have one person who can go out there and buy up all the

methyl bromide to the detriment of everyone else?

MS. FINMAN: The way it would work under the auction, if you had an auction that was sector specific, so you are only auctioning off strawberry allowances in the strawberry auction and you construct it so that only an allowable user can make that initial bid, then no, within reason. Right? Do you follow?

MS. BISHOP: No.

MS. FINMAN: Okay. If you construct it so that at the initial allowance, at the auction, you have to be a user in order to be able to buy it. Only a user, only a farmer or a commodity owner who is an approved user could actually put in a bid for those allowances.

So it couldn't just be anybody coming in and buying it up. But because it is at auction, it would be similar to how it is now, really. It would go to whoever says I'm here and I want to pay.

So you could have one strawberry user potentially buying all of the allowances and

hoarding them, in theory, if that is something that they had the resources to do, but it may not be the most practical or likely outcome.

MS. BISHOP: Does that worry you from a just a purely trade practice area? I mean, it is a free market notion.

MS. FINMAN: It is a free market.

MS. BISHOP: But there is also an issue just in terms of business practices. If you have one business within a particular sector buying up all the methyl bromide within that sector to the detriment of the other business in there, that in and of itself is a concern.

MS. FINMAN: I guess this is a concern because people, having experience working with the Telone cap, have been sensitive to this issue of people hoarding those allowances.

So it is a valid concern. But under this system, I think it would be unlikely for one grower to necessarily go out and buy up all the allowances for that sector, but anything is possible.

MS. BISHOP: Or one company buying it up.

MS. FINMAN: One company, one major company. But you can construct it, again, so that you have a set-aside. So you are pulling a certain amount of allowances out of the pool and you are only making them available at an auction to small users or something like that.

But, I mean, there are a lot of small users, so how would you do that? You would have to take a lot of methyl bromide out of the pool. It gets fairly complicated, but these are really important concerns.

It gets fairly complicated, but these are all really important concerns.

Any questions?

MR. NIDAY: Paul Niday, with Tri Cal. Correct me, but the allowances are use-or-lose on a calendar basis, right?

MS. FINMAN: Right. They would expire at the end of the year. So if you bought -- I think it is for this lady's question up front.

If you were buying all the allowances and hoarding them, it is not that you could then use

them indefinitely, but it would be preventing your competitor from being able to access an affordable supply of methyl bromide.

MR. NIDAY: But if you had the auction in December.

MS. FINMAN: Well, in December, for the following year? We would want to have the auction in December for the following year. So we wouldn't have an auction in December for you to use all your allowances in that month.

MS. BISHOP: And I am assuming this has already been vetted through counsel. Otherwise, you wouldn't have put this up here.

MS. FINMAN: We have asked our Office of General Counsel to look into the statutory authority for doing this, and there isn't a lot in the statute one way or the other.

So right now, we haven't had an official determination from our Office of General Counsel yet, but it seems that this could be a feasible option from a legal standpoint.

But we are looking into getting an

official determination one way or the other.

MR. BROWN: This system would leave a lot of extreme uncertainty out there in the user community based on the fact that there is always that potential that either some fellow user comes in and buys up the market or some fellow user, in association with a brokerage or whatever that you are implying, could corner that supply to the detriment of other folks.

And we've got industries out here that are rolling hundreds of millions of dollars into production of these crops, and you are socially reconstructing the shape and the dynamics of these businesses.

You need to think long and hard about something that intrudes that far into the enterprise.

MS. FINMAN: We definitely want to think long and hard about any of the options we have laid out, and these are very important concerns that you are bringing to our attention.

So the idea of the auction is to

approximate the market distribution as best as possible. So it would be our hope that instead of creating some kind of distortion in the marketplace, that we were actually trying to come close to what the market would be doing.

But if the user community doesn't feel that that is how it would work out, we want to know that. So thank you.

MR. NAGATA: Neil Nagata. I am a strawberry grower in southern California. If this type of system starts, you are going to encourage, I think, corporations, the larger shipper organizations to buy and basically eliminate the family farm.

So I don't think this is a reasonable avenue to take. Just by one individual coming in and buying up all the amounts and then perhaps later, down the road, selling at a markup price to all the other growers, they are going to be competitively at an advantage.

It is not even fathomable how big this thing could get. So my comment would be I don't

agree with this auction type model.

MS. FINMAN: How do you feel about this option if there is a set-aside involved that would basically be a separate auction just available to small users? So big corporations couldn't buy these allowances. It would be just an auction for the small businesses.

Would that address some of those concerns?

MR. NAGATA: I think simpler is always better. The more complex this thing gets, the harder it is going to be to manage and the harder it is going to be for us to figure out what to do.

We are trying, on an annual basis, to figure out what we are going to do next year and if we don't have this option or if, in a surprise, someone comes in and buys all the methyl bromide and possibly will get, because you are small grower, you may get some.

Well, what happens if there are ten of us competing for a small amount and we don't get enough to cover our needs? That individual who owns all of it is going to come back and say, well,

you know, you paid three times the amount, and now they have basically paid for their crop on our backs, and that's not competitively correct.

MS. FINMAN: Thank you for your comment.
Gabriele?

MS. LUDWIG: My first question is just trying to go back over exactly how, in the auction, do you go from the person who gets the bid to the person who actually can use it? I don't quite understand that step.

I think you should go over that again, and then I might have a follow-up question.

MS. FINMAN: The way it would work under the auction is that because of the need to be sensitive to people who are actually going to use this allowance, we would have an auction that only would allow users to buy the allowances.

Now, after that point, though, if they decide they don't want to keep that allowance, they won it at an auction, they could choose to sell it to somebody else and they could sell it to anybody they want. They could sell it to a broker, who

could then hold onto it.

The broker can't redeem it, the broker can't use it, but they can hold it and then sell it, and it helps the liquidity of the market to have other intermediaries there.

You could sell it to some school children who want to retire the allowance. I mean, there are all sorts of other people, other than users, who may want to hold the allowance, but who couldn't use it and who would not be able to buy it at the initial auction.

Tom?

MR. LANN: One of the things I want to go back to is in this model and in the Canada-like model, you are talking about creating a database, and the idea of the database is to make the market completely transparent.

So at the end of the auction, all the people -- who actually won and actually acquired some of those allowances, whether it be a general allowance for a critical use exemption and it is restricted to all 16 categories, or whether it is

an allowance specific to, say, tomatoes or strawberries, who has those allowances would be transparent.

In other words, you could go to a website and find out who has how many, so that it would facilitate trading.

That is the idea behind the -- the infrastructure behind this.

MS. LUDWIG: But if I understand you correctly, in some ways, this then includes the previous model, because there still has to be some determination of who may use the methyl bromide, and that is the part about it I still don't get in this model.

MS. FINMAN: Because you would be restricting the option to only existing users, we could either build in a provision where you self-certify that you are, in fact, a user of methyl bromide when you submit your bid, or we could do something more extensive, where you would -- we would get a list from all the consortia of this is a database that has membership in it or this is a

list of who is a farmer or who is a commodity user.

It would be much more complicated that way, but we could probably do some kind of up-front screening, if you will.

MS. LUDWIG: Then that gets back to my point, though, earlier, that when you deal with someone moving into permanent crops, they may not have been a user in the last 20, 30, 40 years, even though for now they do need it.

But as I say, that is part of it I am still confused on, to be honest.

MS. FINMAN: It is good to point out where there is ambiguity, because either we are not communicating it clearly or we haven't given it enough thought yet. So it is important to bring that up now.

But obviously, under any of the mechanisms that we are talking about, we have heard from the user community about the need to allow for new market entrance. So we think that under any of these models that you could accommodate, people who are moving into a new crop, because you do change

what you are going to plant, it happens, right?

So we want to be able to include that and that is our intention.

Is there a another question?

MR. KIM: This is Jin Kim, at USEPA. I think we just need a clarification here.

You mentioned that school children can take it and retire with it and, also, we are talking about restricting the auctions to user people, existing users.

So I guess we need to clarify whether it is an option to have school children can buy it and retire or not.

MS. FINMAN: The school children buying it, they could not go to the auction and buy it, but if you are creating a system where anybody can buy an allowance off a user, then anybody can buy an allowance of a user.

I mean, we could restrict it so that you could only trade to another user, but then you lose a lot of the benefits of trading and because it reduces the liquidity in the market.

So under the acid rain program, one of the big benefits has been allowing brokers to hold them, to hold the allowance, and it also helps -- some people are concerned about the CBI data. So if they have a broker who is holding the allowances for them, that also addresses that concern.

We'll go to Reggie, and then to Keith.

MR. BROWN: Doesn't that basically violate the fundamental premise of the Montreal Protocol that basically says that the product is only supposed to be used in certain critical uses? So you implied that I could buy it and use it for any other use I decide I want to put it in the ground for.

MS. FINMAN: No. You could buy it at auction, if you are an approved user, and you could trade it to somebody else.

I could decide I want to hold it because I think the market for methyl bromide is going to increase ten percent and I will make a profit off buying these allowances and selling them.

I can hold them. I can't use them. I

can't go get methyl bromide --

MR. BROWN: But the whole premise of your argument says that I, as a producer, am going to be fundamentally abused to the extent that I can be extorted by this excise tax on methyl bromide, which is fundamentally galling to the producer just trying to survive in a business and grow food for you as an American.

MS. FINMAN: Thank you for the comment.
Absolutely. Thank you. Keith?

MR. SARGENT: Keith Sargent, USEPA. I am an economist here and I wanted to comment on this idea that seems to be being expressed of someone being able to corner the market.

Economists like auctions. There is not a guarantee of equity, but it always goes to the highest valued use. There is not much chance of a market being cornered.

The Hunt Brothers tried to do it with silver in 1980, bankrupted. deBeers, for example, does it with diamonds now and they are successful, but that is about the only example.

In theory, yes, cornering the market is possible. If I was to buy up all the basketballs, I would prevent the United States Basketball Association from ever holding a game. They would have to buy them from me. It's unlikely to happen.

At the EPA, we've got the sulfur dioxide trading. You can buy up all the permits. If I could buy up all the permits, I could drive everyone out of business that produces sulfur dioxide.

If Greenpeace wanted to drive it out, they could do it. It doesn't happen. It is not going to happen with this.

MS. FINMAN: Keith is an economist here at the agency. Steve?

MR. GODBEHERE: Steve Godbehere, Hendrix and Dail. How does this auction system address the logistics within the market? Because methyl bromide is not handled like freon in little small cans and it is not handled in two and a half gallon plastic jugs.

So how would this address the logistics?

MS. FINMAN: That is a good question.

There is an important distinction to make here. The auction would be for an allowance, which is the right to get the methyl bromide. You wouldn't actually be purchasing the physical material at the auction.

You would still have to go to the market, go to your distributor, and buy the methyl bromide. The only difference here is that you've got an allowance that says you are allowed to buy it.

Actually, in a couple of slides, we have some diagrams that graphically depict it and it may be a little clearer there.

Burle, did you have a comment?

MR. SMITH: Yes. Burle Smith, USDA. I had a question for Keith. As an economist, could you speak to your theory in terms of impact on a regulated market, where you are constrained on supply?

MR. SARGENT: The sulfur dioxide market I think is a perfect example of that.

MR. SMITH: Except in the case of sulfur

dioxide, the actual product itself has no value, intrinsic value in and of itself.

MR. SARGENT: Doesn't basketball have analysis intrinsic value, in and of itself?

MR. SMITH: On the regulated market.

MS. FINMAN: These are all really good comments and it is important that we get these ideas out and on the table, so that we can hear your concerns and make sure that we are thinking about them when we go through our decision-making process.

I mean, we are not going to come to any sort of conclusion today. That is not the purpose of this briefing. We don't have an option that we prefer. We want to lay out as many possible things that we have thought of and really understand from you where your concerns are coming from.

So this is exactly what we wanted to happen.

MR. LANN: I was going to say the same thing, that she has more slides that describe, in a fuller breadth, the options, kind of the base

options, and most of what I hear now are comments on this particular option and I am wondering whether we should go through that.

MS. FINMAN: Why don't I take Gabriele's and then we'll go through the next slides.

MS. LUDWIG: It is becoming obvious I am not an economist. I just want to clarify.

So if I am the end user for methyl bromide, would I be paying them -- I would be paying once for the permission to use the methyl bromide and then I would be paying again whatever the market price is for methyl bromide?

MS. FINMAN: Yes, that is correct. I would also -- I will take that as an opportunity to finish up this slide.

There is the potential to construct this option so that if we had somebody who was doing it for free, kind of like the customs auctions are done. There are contractors out there that do auctions on behalf of the government without charging.

They may establish a fee to cover their

administrative expenses. So there could be a fee. You would also be paying for the allowance and then you would also be paying, when you actually go buy the methyl bromide, but one of the ideas behind the auction is that because you are already paying for the allowance, you are going to be less willing to spend as much for the methyl bromide.

So that the price of the actual methyl bromide would be less than without an auction, and that difference, which normally would go to the producers and importers in terms of profit, would then be going to the U.S. Treasury instead.

That is the amount that you spend on the auction, that allowance, the bid premium is what we have been calling it, would be going to the U.S. Treasury instead of the producers and importers, and that would impact their windfall profits.

MS. BISHOP: You have to be kidding. I mean, I'm sorry.

MS. FINMAN: Did you need the mic for that? She said we have to be kidding. But, I mean, we're laying out options and we want to hear

what you think.

MS. KELSEY: I am Anja Kelsey, from Congressman Ose's office. I think that I realize what you guys are saying, that you are trying to lay out all the options, but the comments in this room alone are really indicating to me that you better take this back and do some serious drawing board before you even mention it again, because I cannot, in good conscience, bring this back to my boss to tell our constituents, the growers, the users, this option will work.

MS. FINMAN: The one benefit for the users under this option is that they will have allowances and they will know that they are going to get at least this amount of methyl bromide.

So there are tradeoffs, because it is more complex. There are perceptions about whether or not it is fair and are they paying more because they have to pay once at the auction and once later.

But then the tradeoff is that they may not have an actual physical allowance. There are all

sorts of tradeoffs involved and we are laying out the options, but we are certainly not predisposed to any one thing or another.

We are before, way before the proposal at this point. I mean, it is important for us to know that there is this concern and the more we hear it, the more that helps us inform the policy-making process.

Thank you for your comment, and thank you for coming down. I guess you guys are a little busy.

Let me move on to the next slide, and this won't be the end of the conversation, I promise.

I am going to show you some charts or some graphs of how these options would look. This is both the Canada one and the auction one.

Under the Canada one, the way allowances would be distributed, we would get the authorization from the parties. Then EPA would have some additional data submission given to us by individual operations, so that we could create a baseline or project a baseline for them.

So maybe this gets at Gabriele's concern that if you haven't been using and now you are moving into this crop, we can get some data from you to project a baseline. That would help.

Then we would prorate the amount of allowances the parties gave us to the users who gave us the additional data and we would take those allowances and place them in their allowance account, which, again, would be maintained in this database system.

Now, it differs a little bit under the auction. The distribution, we would get our authorization from the parties. EPA would then either run an auction or let a contractor run an auction.

Then the auction house would then conduct an auction, either one auction, if we have a fungible single pool of methyl bromide coming to us from the parties, or multiple auctions, so we would have a strawberry auction and a pepper auction and et cetera, et cetera, if we had a restricted allocation authorization from the parties.

Then we could have even more permutations of this model, where we would have additional auctions that would be to auction off the set-asides for those users that may qualify for those set-asides.

So that is how the distribution would look under those two models.

In terms of redeeming, now, you've got this allowance, how do you actually get your methyl bromide?

So let's start over in the lower right-hand corner. If you are an allowance-holder, you would do what you normally do. You would place your order with your supplier. So that is either your distributor or if you are buying directly from an importer or what have you.

So you would place your order and you would certify that you are an appropriate user, that you are going to be using it for CUE use.

You would debit your account and indicate which supplier you are buying from or which supplier you have contacted and how much you want

to buy of what type, and then an e-mail would be sent from the tracking system to the supplier who you have indicated that you are buying from, to let them know that you, in fact, have sufficient allowances of the correct type in order to execute your purchase.

Once that entity has received the e-mail, they can go ahead and fulfill your order. Then on an annual basis, at the end of the year, there would be sort of a true-up, where you would tell us how much methyl bromide that you bought you actually used. So that way we could get a handle on how much is been stockpiled and how much we are going to carry over into the next year.

This would be the same for both the option where we have an auction and the option where you have to give us additional data to create a baseline. So it would work the same way.

Then trading or transferring of allowances would be pretty simple. You would either consult the database to find out who has allowances, if you want to buy allowances, or you may, independently

of that, go talk to your neighbor and say, hey, I have some allowances I want to sell, and then you would go into the tracking system and basically transfer the allowances from your account to the other user.

So it means that this other person who is buying the allowances would have to create an account. We could set up a pretty simple mechanism to do that.

Then an e-mail would be sent to the other party notifying them that the allowances have been transferred.

Actually, before I get into this, I want to stop and see whether or not there are still questions about the mechanisms of how this option or these two options would work, and to get general feedback or maybe even if there are other options out there that you guys are thinking of, to maybe bring those up, as well.

MR. NAGATA: Neil Nagata, again, a grower from San Diego. I was wondering, why does the government believe that the U.S. Treasury should

benefit on the allocation of methyl bromide?

MS. FINMAN: It's a very good question.

Under a lot of auctions, you can take that revenue and you could give it back to the user community. So you could create a research program that benefits the user community or a transition program.

We do not have the statutory authority to do anything with the money. So it has to go to the U.S. Treasury. We can't retain that money in order to run the program. We can't retain that money to then give back to the user community to help with the methyl bromide phase-out.

We don't have the statutory authority to do anything.

MR. NAGATA: So then how does an auction make sense that money goes to the U.S. Treasury? I mean, we already paid taxes on the sales, I'm sure of that. So it's a double taxation, as far as I see it.

MS. FINMAN: Tom, I see you have your hand up.

MR. LANN: Actually, there isn't an additional excise tax on methyl bromide, although one was created for all other ozone depleting substances.

It was recognized that in a regulated market, if you are artificially constraining the supply and demand stays the same, you are going to have the producers and importers making windfall profits and rather than the producers and importers making windfall profits, the idea was that that money go to the general treasury, so that it could actually be fed back into USDA's research program to help look at alternatives and make the transition.

That is the theory behind it. I am just saying the theory behind it.

MR. BROWN: You don't have statutory authority and as far as I know, you don't make the laws. They are made on the Hill and I think you are out there writing law right now.

MS. FINMAN: That is correct.

MR. LANN: No, no. All I am saying is the

theory behind market based systems and why --

MR. BROWN: Let's leave the wisdom to the Hill and the theories out of the agency.

MS. FINMAN: Did you have a question, Rebeckah, from the Farm Bureau?

MS. FREEMAN: We know at the Office of Air and OPP and USDA have worked really hard on this. We know it has been a very daunting task.

Obviously, the crowd isn't especially thrilled with the outcome. But that being said, as far as the Treasury issue, I assure you that any money that is going to go for anything into the Treasury, if you guys need authorizing language to do that, I mean, I don't mean to speak on behalf of the Hill offices that are here, but I think, at the very least, that is probably something that we could provide some relief for, if, in fact, we choose a system that uses a funding mechanism, option or otherwise, to make sure that the moneys that come in through that go into the appropriate agencies or research work or, heck, I don't know, registration of products that may otherwise be an

alternative that no registrant is willing for a market share that's not big enough to take through registration, programs like that.

But I think certainly you are going to get a lot of resistance from people seeing it just go back into the general tax dollars.

I hate to use a term that I think that is something that, from my philosophical and political beliefs, is not consistent and that neither is it with those in my organization, but some of my counterparts on the environmental group, exclusive environmental group side, use the term social justice a lot.

So I'm going to toss out the notion of although in a purely economic stance, I do appreciate the discussion of the market, how it works and where it has worked and where it hasn't worked.

But part of the motivation of why I am here representing growers and why some of the rest of these folks are here representing growers is not just to make sure there is methyl bromide out there

in the market available.

It is certainly not to restrict market accesses and engineer them anymore than necessary, but we are also here to protect the viability of the folks who produce the products that use methyl bromide, and that is a big part of why we are here; not just to make sure it is out there, not just to make sure we can get it, but to make sure that people who are otherwise following the rules, otherwise trying to do the right thing, aren't tempted to say, oh, it's not just not worth it, we're going to get out of it and sell it.

That is not good for the AG economy. It is not good for the health and the food safety of the people who buy the products that are grown here in the U.S. You don't want to be buying tomatoes that are grown in some countries, that they are not safe and they are not healthy.

I mean, from a purely selfish consumer standpoint. And I don't think that that is fit in so well with what is a purely justified economic conversation.

I know that that is not typically the role of the Air Office and it is not typically the role of a lot of folks within EPA and the charge, but it is something within the greater bounds of the treaty and within the greater bounds of why the CUE is even applicable in this situation.

I think it might be something that needs to be taken into consideration.

MS. FINMAN: Thank you. It's a good comment. It's good to see you again.

MR. LANN: We are not taking sides here. We are explaining options and the theories and the principles behind it.

This is option presentation.

MS. FREEMAN: I am only explaining why that is a problem here.

MS. FINMAN: Obviously, in any set of options, there are a whole bunch of different policy considerations. So one of them is, well, is this cost-effective, is this efficient.

Others are is this equitable, is this going to protect the environment. I mean, there

are a whole host of different policy considerations.

So this one, because it's an auction, it's very economically based, that is what we are talking to you about, but, obviously, in the agency policy-making process, there are a whole slew of issues that we have to consider.

So it is important for us to hear your input so that we can weigh that and understand how much equity do we trade off for more cost-effectiveness or vice versa.

So it is absolutely important to get this feedback early. Thank you.

Are there other thoughts or comments about any of the options that we have discussed so far? The first one, where we are just really creating the supply; the second one, where we are creating the supply, but also giving end users more certainty through a baseline; and, the third one, where we are giving users more certainty through an auction.

MS. LUDWIG: I am struggling, also, with

sort of with any of these options, again, coming back to sort of two principles.

One is having written a CUE and how much scientific argument went into saying these are the people that have the need for very specific biological reasons, and that is not -- I don't really see those arguments appearing officially anywhere, except for maybe in -- well, not even in the Canada-like. It's just saying the baseline. It's not even saying do you have specific problems.

I realize that is the scientist speaking and that is based on doing a CUE. That is not dealing with how the hell are you going to establish that in real life.

But I'm just saying that is one issue, in the back of my mind.

The other one is, again, coming back to any of these models, the enforcement side. All of them have some underlying assumption that you are going to know who is allowed to use it, and I am not seeing how you know who is allowed to use it or follow up on that.

MS. FINMAN: That is a good question.

There was a question about this earlier, and it is something that I think we need to flesh out a little bit more. But how explicit do we want to be in saying this person is a user and this person isn't?

So if you applied for your commodity group for your entire state, do you want us, EPA, to be restrictive and say, well, you told us you only need it for guys that have this type of soil, and so we're only going to allow it for guys with this type of soil?

Do you want us to be policing that and do you want us to have a list of everybody who meets those conditions, or do you want more flexibility so that anybody going into buy methyl bromide can say, you know, I meet this conditions, I have this type of soil, and I need the methyl bromide, or I'm an approved -- I'm in this commodity group and I need the methyl bromide?

So we can make this more restrictive or less restrictive. More restricted means more

burden for you and for us. It might be some decreased efficiencies if you have trading options of various types.

But we are happy to do what is best for the user community and to look at all the different policy considerations and pick whichever option makes the most sense.

So we can do it either way.

Jim?

MR. WELLS: If the parties end up allocating based on specific uses and it is somewhat less than what was requested, then if you just open it for everybody, that is fine, but the people who have that use may not have it available to them because it is gone already to somebody who didn't have that use that was approved.

So you do get into that fairness question, I think, to some extent.

MS. FINMAN: I think this may come back to, and this is definitely an area where it would be great to have some offline conversations with people on -- again, for you to call me.

But in the nominations, it was really hard to discern that we are applying for users because of this one reason. There was usually a whole host of reasons why users were applying some fairly complex interactions, both on the technical and the economic side.

Jim?

MR. WELLS: But that is not really the case, because in the case of Telone, you are very specific. That was one of the reasons. So if you are in a situation where the reason that the allocation was granted because you have a Telone cap, then you have to prove up. But if it was because you have Karst topography, whatever that is, then you don't have to.

MS. FINMAN: The one exception is the Telone issue, where those crops were nominated because they would hit the Telone cap and they needed some methyl bromide available in case that cap was hit.

That is the one exception where there is a really specific singular purpose outline for why

they need a critical use exemption.

So let me actually go to the next slide and talk a little bit about Telone caps, because all of these models don't really address how you deal with that.

For those of you who aren't familiar with the regulatory circumstance in California, they have a program where Telone, which is one of the alternatives that some users may be using instead of methyl bromide, where Telone is restricted by township, by a certain amount of area.

So they are only allowed to use a certain amount of Telone in that area and when they hit the cap, no more Telone is available.

So we have had requests for a critical use exemption for users to be able to access methyl bromide if the Telone cap has been hit.

And none of these models have been explicit about how you would deal with Telone caps, which is certainly a very specialized circumstance.

We are very open to other options. This is one that we thought would be sort of minimally

complex and minimally burdensome and not require too much from people.

But if there are others, definitely speak up. This is an area where I think it would be very helpful to have, again, some additional conversations here and offline.

If you are in a situation where you can only access methyl bromide because you have a contingent nomination or contingent authorization, once the Telone cap is hit, you would have to -- and, again, if you could help me flesh this out a little bit.

When you go to your regulatory agency or you go to buy Telone, somebody is going to tell you you can't get it because you have hit the cap.

If you could then provide that denial or that determination to EPA or to your supplier when you make your methyl bromide purchase, then that would, I think, be able to be the equivalent of self-certifying that you are an approved user.

So in this case, you are an approved user, because you have hit the Telone cap and here is the

letter that says I have hit the Telone cap, or here is the agency -- yeah, go ahead.

The folks from California may be able to help clarify this a little.

MS. FREEMAN: How do they calculate that additional need for methyl bromide over and above the Telone, if it may be not already in the request package? How will that be calculated?

MS. FINMAN: Let me see if I can understand the question. The amount of methyl bromide that was -- we requested a certain amount of methyl bromide contingent upon hitting the Telone cap. So the parties will then give us an authorization, presumably, that is contingent upon us hitting the Telone cap, and it will be for a specific amount.

So that is how the overall amount would be determined. It would be this amount of methyl bromide, based on what the U.S. Government -- what you told the parties, based on what the applicants told you was needed in case we hit the Telone cap.

There may be somebody else in the room who

could speak to the particulars of how we arrived at that determination on a sector basis, but I believe we looked at the technical and economic feasibility for that sector and then assumed what happened if we hit the Telone cap and you needed a 100 percent in the sector. Sweet potatoes is a good example.

It would be a separate pool that would be available for only those users who have hit the cap.

Jim, do you have a comment?

MR. WELLS: I was just going to say that it is actually more of a market-driven -- the Department of Pesticide Regulation tells people how much can be used in a township, and then it is up to the supplier basically to make sure that they don't sell over that amount.

The numbers are known, what the maximum number is is known, and you just sell up to it. Basically, in the end, the manufacturer -- the registrant actually has a service that they sponsor that makes sure that nobody gets over what they are supposed to get.

MS. FINMAN: So maybe if we were to work with Dow on this, so that they could provide some kind of verification.

MR. WELLS: I think it would be more a case of somebody coming back and saying it's all used up for my township. It isn't going to be the regulatory agency, because they don't go to the regulatory agency to say I want to buy it. They just buy it.

MS. FINMAN: They go their supplier and the supplier says I'm over or I can't do it. Okay.

So that might actually make it easier to do this kind of demonstration then, because if you are going to your supplier to get the Telone and they say I can't do it, so then we could work with them -- go ahead.

MR. MIGHTY: Hodayah, Paul. What typically happens is growers come to us with the use that they want to use Telone. We file all the paperwork. It goes through a crop data or CDMS. They process it.

It gets either accepted or denied. Then

what happens is -- and, typically, this does not take place until September, October, November.

So what I see missing in this whole thing is there is time.

MS. FINMAN: The time, because people who are fumigating in November would need to know.

MR. MIGHTY: And right now, typically, the crops that are affected are the perennial plantings. They have made a decision to fumigate a crop. They have planned on this typically for a year, and then to find out, one, they don't have any Telone available and then to have to go through the steps to try to get methyl bromide.

And I am still lost as to how, once they have an allocation through this process, how they are going to get it and eventually it's going to come through us and then get actually applied.

MS. FINMAN: Right.

MR. MIGHTY: Before the allocation, I guess, is lost at the end of the year.

MS. FINMAN: I guess, under this system, based on what I am hearing from you, if the user is

coming to you and saying I'd like to buy Telone and they can't get it, there is a denial, so then you would be allowed to go ahead and by methyl bromide for them under the cap.

I guess it gets a little more complex if you are talking about an auction system, because you would have to buy that allowance before you would have to purchase it as a trade from somebody.

So it gets a little more complex under the auction.

So I think we would have to think, because of that specific timing constraint that you are talking about, how exactly that would work.

But it definitely does work under some of these options and I think we would have to just work on it a little bit more to figure out exactly how to make that mechanism doable for the user community.

But that's a good point. Thank you.

MR. MIGHTY: Just one last thing. In all the discussions that have taken place, the one thing that is really missing, and Steve brought it

up earlier is distribution.

You see very little discussion or very little talk about distribution. You talk about manufacturing, you talk about end use. There is a whole elaborate system in place that handles the product and none of that in any of these proposals has been even discussed.

MS. FINMAN: I think it is, in part, because we are trying to minimize our intervention within the distribution chain. So we know that we have to turn the spigot on. We have to create some production and import in the U.S., and we know that there is this concern downstream of some people saying, well, I want to know that I get something.

So we have been focusing on that end, but we haven't been made aware of any particular circumstance where you would want us to intervene within the distribution system and make sure that something happens at a certain time or in a certain way.

We have been sort of saying that part of the system ain't broke, we're not going to fix it.

But if there is something that you see as being a problem with what we are proposing either upstream or downstream that is going to impact you, then we should definitely talk about that and see whether or not it means that a certain model may not be feasible or if there is something else we need to do make a model work for you guys. So call me.

MR. LANN: Paul and Steve? The slide that Hodayah just showed, where the database works and the user goes to the distributor and you get notified by the database, if there are things about that that don't work with your system, we need to know about it.

MS. FINMAN: Yes. Tracy?

MS. HEINZMAN-SMITH: If you go back to that slide, I guess it was the one that had the -- the one before that.

I think what happens there, and it may not be a problem for the distributor, is that that distributor is going to have to anticipate a certain amount of methyl bromide that has to be on hand, because they are not going to actually get

the order until all these users have been allocated their whatever in their account, and the producer is going to know at the beginning of the year that they can make a certain amount.

But the Tri Cals of the world have to be able to have enough material in inventory and know when in advance, so that when the user comes, there is not a huge shortage or a need to get material from the producer on a short turnaround.

MS. FINMAN: That makes sense. So we may modify this so that the distributor doesn't have to wait to place the order. They can place their orders. They just can't sell it to the end user until they get the verification.

MR. GODBEHERE: Who I see being hurt in this ultimately is going to be the smaller grower. They have been hurt in Canada.

Basically, all the methyl bromide now in eastern Canada is in the hands of one person, because what happens is as the grower allocation got smaller and smaller, they were unable to find anyone that could apply those small amounts,

because the cost was so high to go do that.

Logistically, it was impossible to do.

So what they were forced to do was sell their allocation. So the allocations have all been sold and they are basically in the hands of one person now, and that is what will happen ultimately here is the smaller grower is going to be hurt and it is also going to involve the distributor, too, because as these allocations get smaller and smaller, logistically, you can't drive from Georgia to Texas to do a half an acre. It's impossible.

So the concern there is that people had so little methyl bromide available to them that sort of your economies of scale, it didn't mesh up with being able to fumigate those small acres.

MR. GODBEHERE: That's correct. The acreage got so small that an applicator could not go there or a distributor couldn't ship those small amounts. The economy of scale affected it.

The small grower ultimately will be put out of business with this option system.

MS. FINMAN: Thank you for your comment.

Other thoughts or comments?

Actually, I have a couple of slides where - and it is very preliminary -- where I have sketched out some pros and cons for the options that we have just talked about, because, again, one of the goals of this meeting is to get you thinking about the tradeoffs involved with these various options.

This is not inclusive. It is just a first step. I tried to put myself in the perspective and the shoes of the user community when thinking about these pros and cons.

So under the QPS-like model, this option has the least regulatory work involved with it. So you're not going to have a lot of new or different types of requirements, and it tries to rely on the market mechanism so that we are not getting involved with issues about distribution, the distribution system or what have you.

But we can only provide certainty -- if we get an allocation from -- an authorization from the parties that is at the sector level, we can only

provide certainty at the sector level. We can only say strawberries or tomatoes is going to get this amount and this amount.

So we have no capacity under this model to go to an individual operation in one state or another and say you get this many kilograms. So we can't do that under this option, but it is the least burden and the least regulation involved, and it is pretty similar to what is in place now.

Under the QPS-like model with the Canada-like component, this is really the traditional command and control approach. There would be a significant amount of new burden involved in creating a baseline, and we are not going to minimize the amount of work that is involved here.

It would provide certainty, though, to the individual operation. They would get the most certainty. They may know that they don't get enough, but they would know that they get some to the user, to the individual user, and then that individual user could then sell or buy to either divest themselves of that allowance or to augment how

much they've got.

But one of the key factors is the difficulty in implementing this by January 1, 2005. I don't know that we are going to be able to get data from everybody and establish a baseline and go through that notice and comment rule-making that would surely be involved in such a process for establishing a baseline by January 1, 2005.

So the user community would have to be resilient enough to -- sort of a change in the regulatory structure, so that you would be operating under one type of regulation in 2005 and then once the system is up and running, the rules would change, but it would be changing based on input from you guys that this is what you want.

Then under the last option, which is you've got the QPS-like elements, plus the auction, this would be -- it would involve more regulatory burden than the QPS model, but it would be less burden than the Canada-like model.

So it is sort of in between in terms of how much does it require you to do and to tell us

and to report and to track, that sort of thing.

It may reduce windfall profits to the producers and importers, because you would have a certain amount of that bid premium that you pay at auction going to the U.S. Treasury, and I say may because we don't really know what the demand curve for methyl bromide in each commodity or for each user necessarily looks like, and there may be some people who are willing to pay a lot more.

But it may actually reduce those windfall profits and then, obviously, we don't have statutory authority to do anything with that, it would just go to the U.S. Treasury, but that is one of the tradeoffs to consider.

You would have the benefit, like under the Canada model, where the individual operation would have some certainty about how much methyl bromide they get, but you would have to pay for it. You would have to pay for it at the auction or through buying it from a trade. There may be a user fee associated with an auction, as well.

So these are just very first stab at some

of the pros and cons. This list could probably go on and on and on, but these are some of the tradeoffs that I wanted to get you guys focused on, and I'm sure there are a lot of others, as well, so that we can have this conversation now in the meetings that we are having over the next couple of weeks in Michigan, in North Carolina, in California, and in Florida, and then back here again August 15, where we are going to basically wrap it all up, and, hopefully, we'll have a more informed discussion once you've had a chance to talk with some of your members and some of your stakeholders about whether or not there is something that you really like or you really don't like.

So we will have that final session August 15, and, again, you can call me at any time. You've got my number, you've got my direct dial now, in August, after August, as we go through this entire rule-making process.

So any other thoughts or comments or questions? Are there other options that we haven't

considered, that you haven't seen here that you would like us to think about?

MS. HEINZMAN-SMITH: I have a question. I want to go back to the QPS-like model, if you want to go back to the one before. Actually, you could do it from the slide from right before the end.

MS. FINMAN: Okay. The second to last slide.

MS. HEINZMAN-SMITH: Yes. What I wanted to ask is the question about the last -- the sort of downside of less certainty.

I think it ties back to something that was in one of the earlier slides.

Is the reason that there is not -- I think what you said -- there is not enough certainty there is that you could have these group applications or they could have been geographic, and I guess I have a question for the growers, as well as EPA.

If a neutral state regulatory authority that already looks at Section 18 and all those kind of uses were to be in charge of the amount of the

allocation and deciding who would get the need, from a practical standpoint, would that work?

Then my second question is why is that an unfunded mandate if the state AG agency is already doing similar determinations for other programs?

I don't know enough about unfunded mandate probably to know that, but has anyone thought about that possibility?

MS. FINMAN: We have thought about involving states to a more significant degree, and it would be an unfunded mandate if it imposes a certain amount of cost or burden on them and we don't give them the money to do it.

So even if it is in their own interest, it's a very tricky issue, and we want to be careful about imposing obligations on states at a time when states are certainly not eager to accept new obligations, with all that is going on for them.

So if there is a way that we can do this without imposing some kind of new unfunded obligation on states, that would be our preference.

But I would be interested in understanding

a little bit more sort of how you are thinking about involving the states, because they are very knowledgeable stakeholders. They already do interact with the regulated community and so if there is a way to involve them that is sort of minimal and would involve significant resources on their part, then maybe that is something that we can look into a little bit more.

I don't know if there is anybody in the room who has had some first hand experience with Section 18 or maybe somebody from the Office of Pesticide Programs who works with Section 18s that may want to make a comment or two. That could be helpful.

MS. LUDWIG: I'll just start. In California, for methyl bromide, you would have to go to the County AG Commissioners anyway, if I've understood it correctly, and they are used to dealing with allocating Section 18 uses. Any restricted use compound, you have to go to them.

So to be honest with you, my first reaction when I heard about it was this is

something that would go to the County AG
Commissioners' offices in California.

Now, would they be happy about it? That
is a different story, but it is a part of what they
are doing, essentially, anyway.

MS. FINMAN: And that is how they do it in
California because they have extra regulations on
methyl bromide already, correct?

MS. LUDWIG: Right.

MS. FINMAN: So it's not necessarily the
same across all states, which is another important
factor.

MR. BOTTS: Dan Botts, Florida Fruit and
Vegetable Association. Having anticipated this
discussion back when the CUE petitions were
originally described on the process, and I will
tell you right now, even though I did submit a
consortium petition, my position is I did a great
disservice to my industry when I put together a
petition for the State of Florida.

I should have gone out there and met with
every individual grower who uses methyl bromide and

submitted a separate individual petition for each one of those growers, so then you wouldn't have to build all this new regulatory process on top of the system that you already have, because once you make a decision of what a critical use is, that should be valid and convey some value to those people who have gone through the process of determining, through research and other methods, where they can and can't survive without methyl bromide.

We thought we had done a very good job of documenting a need across the industry in Florida for the whole acreage. When we came back and were told in February that we were looking at about 60 percent of what we had requested, we approached our State Department of Agriculture, for the very same reason that, as a trade association, I don't want to be put in the position of telling my individual members or people who aren't members of FFVA that they would not have access to a product based on a decision that was made by the Federal Government, no matter how good that decision was made.

But somebody is going to have to do that.

So I approached our state, because they were brought into the process in the CUE process and the discussion of both the economics part of it and your latest rule has gone out, you specifically suggested that people run the CUE packages by their state lead agencies, which implies a much higher level of participation at the state level in the next round or possibly down the road.

For the very same reason, I didn't want to do it to individual growers without a more defined role and criteria by which to judge it. Our State Department of Agriculture didn't want to touch it with a ten foot pole.

We have been talking about a process that would allow a criteria to be developed that could be used as a screening mechanism based on whatever decision matrix was brought up that would involve all of the stakeholders who be involved in the direct individual user end of it, the distribution chain, even the manufacturers.

Essentially, I don't think, because of Florida's Open Sunshine law, we could exclude

anybody from those meetings or discussions. A task force or commission that would be set up to review this would be probably limited in its membership, but even there you create a tremendous burden on those people who choose to participate in that process, especially in light of, as I read the T-up recommendations that went forward, they were not inclined to do more than a one year petition.

And if you've got changing numbers coming out every individual year, this represents a tremendous burden on somebody just in the review process.

I know that's a long-winded answer to a very simple question, but there are no simple solutions once that petition was determined to be less than the total amounts that were requested.

MS. FINMAN: Those are all very good comments, Dan. One of the things, if you feel it is in your best interest to do, is -- there are a lot of reasons why you wouldn't want to and when we talked with the industry, I think it was maybe a year before the first critical use applications

came in to us, we met with people and we said that you could apply -- originally, we were saying apply as individuals.

And there are a lot of good compelling reasons why people wanted to aggregate up from that into like circumstances and not provide individual data, things about CBI, about the burden on individual users.

So, again, it is another example of one of those tradeoffs. But in the future, we are certainly not restricting how people apply to us either. So it is up to the industry and to those folks to decide whether or not they want to come in on their own, think it may be a little more certainty, if it works out that way, or protects some confidential data and reduce the burden and come in with other users.

It sounds like you've given this a lot of thought with the screening options and stuff, and I would like to talk with you a little bit more about that, about what process FFVA has sort of engaged or thought through, because it may help us do some

troubleshooting here if you guys have already thought through some of these things.

MR. BOTTS: Let me just respond to that. We have been pushing the buttons. We have not got a coalition of the willing yet to come sit down and have the discussion, because everybody is avoiding it like crazy, because they don't want to be put in the position of having to make that decision.

And I was one of the people who advocated consortium petitions when I saw the first application form. That was before the review process took place and after the review process is when the decision, at least at my level, was made that I did the disservice. It should have been individual industry of farm level petition.

MS. FINMAN: Jim?

MR. WELLS: I think the key to the whole state part of it, even in California, anyway, would be the criteria.

If you go out for a blanket and you just want to get X number of pounds and distribute anyway, then you are definitely not going to get

statement involvement, because it is only going to work and it is only going to be even somewhat feasible if there are strict criteria for who gets and who doesn't get.

The state is not going to make that decision. And that brings me back to another point. I think somebody asked earlier what kind of policy discussions there might be in Montreal and what kind of position EPA is taking, and I would like a little more clarification of that.

Are you going to go into Montreal, are there going to be discussions there and are you going to take the position there that you want the blanket? Which I think you did in your application.

In that case, then that changes considerably, I think, how some of these options may or may not work.

MS. FINMAN: In the nomination, we asked for maximum flexibility, and the U.S. is in the midst of developing its position and that is surely one issue that we are all very much aware of.

So it is one of the reasons why we put it in this presentation, even though it is not something that EPA is going to decide. We want to know from you guys if maximum flexibility is good, if you guys have preferences on having more restrictive options.

I would be helpful to know that up front before we go into these meetings.

Tom, you raised your hand.

MR. LANN: The advantage of receiving from the parties an authorization as one lump sum with maximum flexibility is that we then have a domestic process that, if you guys say you want it to be more restrictive, we can do that, but we can't go the opposite way.

MS. FINMAN: That is true. But this issue that you are raising, and it has come up several times now, it is a very good issue and I would very much appreciate getting some follow-up feedback from folks about sort of your perspective on whether or not we should be more restrictive to ensure that those people who really need it get it;

be more restrictive than who is a critical user or to be more broad and say that it is anybody who grows this type of commodity in your state or what have you.

So it would be really helpful to get that feedback now if you want us to be more or less restrictive.

Ken?

PARTICIPANT: Maybe you could comment about the -- under the QPS-type model, why individual operators should feel so concerned that they won't get methyl bromide they need, if, and this is if, if the process works for deciding who should get really critical uses and the nominations were made correctly and all those people who really need it were identified and, in fact, the critical use is granted somehow, there shouldn't be a shortage, because if the nomination is that there will be 20 tons needed for some use and that is what came back in the form of a critical use exemption, and, in fact, you made sure that only those people who really needed it got it.

I guess I need to know why you think there would be -- why individual growers should feel uncertain that they were going to get it.

MS. FINMAN: I think what you are hearing, Ken, is a reaction to there are some people who feel that perhaps we do not nominate sufficient pounds to cover the uses.

So that there are additional critical users, and I think that is what you are hearing is this concern that we didn't nominate sufficient quantities to cover all the users or we weren't sufficient in describing all of the conditions under which users would still need an exemption.

So I think that is why this issue is coming up.

MR. HRUBY: Don't you have a chance to rectify that with this next round of applications?

MS. FINMAN: There is the second bite at the apple and we have been told by some individuals that they intend to provide additional data, because if they think we got it wrong, providing that additional data would help us paint a better

picture, that is something that we want to do.

So yes, there is the second round before 2005 to provide clarifications or corrections. Gabriele, and then Dave.

MS. LUDWIG: I actually want to follow-up on Jim Wells' question, which was going to be mine, as well. I am trying to get a better handle on where EPA and the State Department, how they are coming -- how they are formulating what they are going to talk about in Montreal and then talk about wherever the November meeting takes place.

Are you going to take the feedback you get out of these next two weeks of sessions to help formulate that opinion?

I am just trying to get a better feel for it, because we're talking about how to allocate it, the number of years, how much of the CUEs we even get. I mean, there's a lot of things going on.

So I am just trying to get a better handle on how -- because, I mean, I haven't heard you ask questions that deal with that component, which is a subset of this whole issue.

MS. FINMAN: We have been focused on sort of laying out some of the framework that we haven't really discussed a lot about what the process is like internationally and sort of where we are in that, in that context.

We are in the midst. It's a U.S. Government-wide position. So it's not EPA, it's not State. It's all of us. It's including USDA, and certainly venues like this, letters that we get from you guys, are all important pieces in helping us to understand where the ultimate policy decision should go.

So we are in the process of developing drafts and talking to our colleagues and other agencies and talking to you guys in order to come to some kind of understanding of what is the option that the U.S. is going to put forward.

So this is one part that is an important part of that process.

MS. LUDWIG: This is a different question, coming back to if the states don't do the criteria, the selection part, who at EPA would be responsible

for that?

Again, I'm coming back to there are underlying assumptions of criteria in each of these options and I still don't understand who would be the arbiter in those situations.

MS. FINMAN: Again, this is one of those areas where it would be great to get feedback from you guys about how restrictive or how permissive do you want us to be.

MS. LUDWIG: I'm not talking about how.
Who? Who?

MS. FINMAN: Right. Okay. So once that decision is made, it would rely on this self-certification system, where you face extremely stiff penalties for saying that you meet this criteria and you don't.

So if it is very restrictive and if you have to have this type of topography or this type of soil in order to get the CUE for your commodity or for your commodity in the state, you have to certify, when you buy your methyl bromide, that you, in fact, meet those criteria, and if you

don't, it's something like \$27,000 per kilogram.

It's a very heavy penalty.

So it relies on a bit of the honor system and there are pretty stiff penalties backing that up if you don't.

So it allows us to intervene in the market minimally and to allow users to execute the system faithfully because there is sort of a big hammer if you don't.

That's how QPS works. Right now, when you go to your distributor and say you want to buy methyl bromide because you have some kind of quarantine or pre-shipment need for it, you certify that you have that need.

So it works just like that and I'm sure there are other folks in the room who have had more experience either buying methyl bromide or selling methyl bromide under that regulation and who can talk to you about their experience.

But under the QPS-like option, it would be very much like that. It would rely on the user to certify that they meet these conditions, and then

the question is how restrictive are we going to make these conditions, and that's where we need your input, because it is pretty easy for us to say this is what meets it and this is what doesn't and we're going to base that on what is in your nomination or on what you tell us.

Does that make sense?

MS. LUDWIG: Yes. But let's say like in the Canada approach, the baseline, would that be the Office of Air that would have the human beings responsible for determining that baseline? I'm just trying to figure out -- again, coming back to states, consortia.

MS. FINMAN: It's a good question. I think, again, because we weren't looking to give this responsibility to states, that it would have been retained by the Federal Government and we haven't certainly made a decision about who is going to do what.

It is certainly a big task and I can't imagine that we would be doing it without the continued assistance of folks both within and from

other agencies, but it's not clear yet it's this person in this cubicle who is going to be doing it or this office that has to do it.

But I think it would be very difficult for the Office of Air to go and make some baseline determination without consulting anybody. Obviously, we wouldn't do that and we couldn't do that.

But whether or not it is official run out of OPP, that's sort of a question that our management would have to grapple with.

MR. McALLISTER: At one point in the presentation today, you mentioned a possible role for the Office of Pesticide Products and Enforcement under FIFRA.

I know that at one time, there was a discussion of using a label approach perhaps to -- as part of the QPS exemption.

Are you thinking about that approach here or what role are you thinking of for OPP?

MS. FINMAN: Obviously, OPP has an extensive role in this whole process. But in terms

of specifically the labeling requirements, we really need a mechanism that moves quicker than the label in order to do this.

So because it is changing every year, new uses may come on to the critical use exemption, some uses may fall off, the amounts are going to change, it would be really difficult to administer that under the labeling program.

But we want to create the flexibility so that if the Office of Pesticide Programs chose to, at some point in the future, use the label, because maybe we get five years out or ten years out, and it's pretty much the same year to year, that the flexibility would be there to build that in.

But right now we're really not looking at using the label to run this program.

Other questions?

MR. NAGATA: Again, I have a question about allocation as a broad spectrum. You would also give this to commodities who have not filled out CUEs?

MS. FINMAN: So you are asking -- this is,

again, the question of who is the user?

MR. NAGATA: There are 16 industries that have filled out the CUEs.

MS. FINMAN: Right.

MR. NAGATA: And if you got a broad gift of methyl bromide, that 39 percent, there are probably a 100 other commodities that use it. Are there going to be any criteria for the ones who invested the money on the research, who put -- the strawberry industry in California put up over a million dollars in research. We followed through all the process.

I think you would be rewarding those people who have not been part of the process. We are trying to move ahead and get this, but you can't hurt the individual industries who are going along with your process.

MS. FINMAN: Right. That is one of the tradeoffs that we have laid out here. Obviously, if it is a new crop or a new commodity sector that hasn't put in a nomination, hasn't put in an application to us, and is not in the nomination,

there is no way that we would be able to include them under any scenario.

They could not get methyl bromide. If some new grower somewhere, who grows something that we didn't nominate, I mean, they couldn't get it under any of these options.

But it does come back to this question of how are you going to define a user. Is a user -- if we received an application for California strawberries, is it anybody who grows strawberries in California or is it only those people who are your members? Everybody who is a grower is a member, they should be. Okay.

So in that case, it's maybe a little bit easier, especially if we're given an authorization from the parties that is X tons or X kilograms for strawberries in California. Then that would all be for California strawberry users.

If we get it for all strawberry growers, then, yes, your members would be competing against other members who grow strawberries from other consortia that apply to us.

But this that you are asking of can a strawberry grower someplace that didn't even apply to us is a good one. That question is a good one, can they access the CUE or not.

So on the one hand, if you have a system where you are allowing trading between people and it is really inexpensive for this other user who maybe wasn't initially covered to buy the methyl -- to be able to sell their allowance to you and that brings down overall costs of compliance, that is one thing to consider.

But if you spent time and money to apply for a CUE and you don't think it is particularly fair that some guy in Oregon growing strawberries should be able to get an initial allowance, that's the tradeoff. It is the efficiency versus the equity issue.

So we want to know. It also would be really helpful to know if, in any of the applications to us, whether or not there are sort of special users, like small businesses or something like that, who aren't members of your

consortia that would not be covered under the approved CUE.

From what I understand, there are some sectors, some people that applied for a CUE, I think the forest seedling one, whether or not --

MR. NAGATA: I was just going to use them as an example. We have been picking on strawberries.

MS. FINMAN: They are not exhaustive. They don't cover every seedling grower in the States of Alabama, Georgia, and Mississippi, wherever, all the states, I don't remember offhand. They don't cover every grower. They only cover their members. And who is left out? Is it the small users and is that fair?

So that is a policy issue and I am sure that we are going to hear strong arguments from both sides, and that is what we want to hear. We want to know what you guys think.

MR. LANN: It comes back to Gabriele's question about whether each sector should be treated the same or differently, and we may get

comments that make it very clear that some sectors should be treated one way and some sectors should be treated a different way.

This is going to be a long process and we are going to hear a lot from everybody. Even at an implementation level, there are going to be tradeoffs of efficiency. If we have too many different models for different sectors, that becomes a nightmare. So there will be decisions made about that, too.

MS. FINMAN: But it is an excellent question. Other questions or thoughts? Then Rebeckah, in the back.

MR. HRUBY: The way this process has worked for 50 years, it's gone from the manufacturer to the distributor, the distributor then has either applied or set up the grower to use it safely and efficiently.

So in answer to your question before about another model being presented in addition to these, that system has worked for a long time. How come that is not a consideration right now? If the

true --

MS. FINMAN: The QPS-like model is actually structured to look just like the phase-out, just like what we do now, except that the user would have to certify that they are actually an approved user.

So that is the model that looks like what you guys are doing now under the phase-out. So we have one model up there that is a little definition from the other two because we wanted to give people the option to comment to us and give us feedback on whether or not they wanted something like this that has less intervention, but maybe also a little less certainty.

Could you just state your name and organization for the record?

MR. HRUBY: Sorry. I'm Roger Hruby, with Hendrix and Dail.

MS. FINMAN: Thank you. Rebeckah?

MS. FREEMAN: Rebeckah Freeman, American Farm Bureau. It sounds like of any of the models that are there at least so far, there is a

questionable practicality for some of the smaller folks or some of the folks that aren't operating on a more integrated system.

It doesn't necessarily mean those folks are unprofitable or not the type of people that we want around, but given that and given the fact that those people have to be even more critical and more diligent about planning what their operation is going to look like and operate with from year to year.

And as we are rapidly approaching a phase-out and looking at the options they are going to have, even if they are in the basket right now for being considered for a CUE, what do things look like based on what we have seen out of the parties to the protocol so far?

I think I have seen language in some of the documents saying that we expect the nations who have submitted requests that were substantial, I assume that means 30 percent or above or at some level that they have picked that they consider substantial, that they expect that those

substantial requests will rapidly decline in future years' requests.

And unless somebody can tell me otherwise, I don't hold out great hope upon hope that even within the next five years there are really going to be a whole lot of other uses for some of our smaller market, smaller margin crops.

MS. FINMAN: It's a very good point. It takes time for alternatives to go through the registration process and then to be commercialized. So even if there is something on the horizon, it takes time.

So I don't know what the MBTOC meant by saying substantially reduce the nominations in the near term time frame. I don't know, using agricultural horizons, is a near term time frame ten years or is it two years? I'm not really sure what their intent was there, but it's very clear that the process defined at the international level and that we have been working under here is are there technically and economically feasible alternatives and if there aren't any, until those

criteria somehow change, that is what we would be doing. We would be nominating uses as long as there are not technically and economically feasible alternatives.

MS. FREEMAN: Is the U.S. prepared to go forward with that, even if that means -- I mean, there has been a lot of hesitation of rocking the boat through this process for the result of legitimate things that are happening in other circles diplomatically

But I guess there is a very, very significant unease not only with this process, as you know, but with the willingness of diplomatically -- and this is not personal to any single person, but the reality is it has been explained very clearly to us that the United States is not prepared to rock the boat within the protocol process on pretty much anything.

We're very worried, from the perspective of my people and Dan's people and Gabriele's people, why are they going to bother to mess with this product if, in 2007, when probably some of

them aren't going to have an alternative anyway, they are going to be cut again and they are going to have finagled and gone through all this process and strung themselves out that much longer.

Those are the questions that I am going to be asked when American Farm Bureau makes comments, and I need to have answers to those or it's going to -- you know, I don't want to make your lives any more miserable than they have to be. I really don't.

MS. FINMAN: I know you don't.

MS. FREEMAN: I don't take pleasure in that. But I will, if that is the case, and those are the types of questions that I know you don't like to deal with that aren't perfectly on point, but are very realistic in the world that the rest of these people in this audience are sitting here operating from.

MS. FINMAN: They are good questions and I am glad that you are asking them of us, because, obviously, people you work with and your members are asking them of you.

This is a really important channel of communication. So these are all good questions that you are asking.

In terms of the criteria, again, it is harder to -- in order to change the criteria, there would have to be a consensus decision by the parties to say, okay, we're not looking at technical and economic feasibility anymore, it's something else.

So as long as that is the standard that has been set, we will operate within that and we will work with you guys to put forward CUEs.

Tom has had a lot of experience working with MDIs and other parts of the international process.

MR. LANN: I assume that you were at the hearing on the Hill. I think that the position is that we believe that it has worked, that this structure, in general, has worked before and we think it is going to work this time.

For CFCs for meter dose inhalers, we are 10-12 years into it and it is still -- it is a

gradual decline and there are lots of issues, and I could bore you with all those issues about why it hasn't gone faster.

We think that the same type of process at a very broad level will play out here, and it will work, but I think that you are right that that statement that it is going to happen quickly and you're going to have fast decline, they have been saying that about the MDI CFC process for years and years and years.

In 1998, the EU said that they would not need anymore CFCs for meter dose inhalers in the year 2000. In '98, they said that for 2000, and they are still asking for CFCs now for the year 2005, their current request.

MS. FINMAN: So I guess one of the things to take back to your members is that we have had this very positive experience to carry exemptions on the essential use process and that it may seem like we have been doing this for a while, but we haven't finished the first one yet.

So once we hit November and we have had

the meeting of the parties, we will finish the process and we will know a little bit more how is this going to work, what is the reaction that we are getting.

So it's hard to preach patience, because we have been doing this for a while already, but we will know a lot more after November.

Other thoughts, comments? It's only 3:30. You've got us for another hour and a half.

Well, we can go ahead and I will stay up here, if folks have individual questions. You have my phone number. It is in the presentation. I can give you a business card.

I fully expect to hear from people. I want to hear from people. Again, this is just the beginning of a conversation that we would like to have with you all summer long, as you have a chance to think about some of these tradeoffs, because they are not -- they are very complex issues and we want to work with you on it.

Thank you very much for coming. I appreciate it.

[Whereupon, at 3:35 p.m., the meeting was
concluded.]